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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the State of
competition Among Telecommunications
Providers in California, and to Consider and
Resolve Questions raised in the Limited
Rehearing of Decision 08-09-042

Investigation 15-11-007
(Filed November 5, 2015)

REPLY BRIEF OF RESPONDENTS

**CONSOLIDATED COMMUNICATIONS OF CALIFORNIA COMPANY (U 1015 C)
CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES F/K/A SUREWEST
TELEVIDEO (U 7261 C) ("CONSOLIDATED")**

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1 **I. INTRODUCTION**

2 Pursuant to the schedule outlined in the July 1, 2016 Scoping Memo and Ruling of
3 Assigned Commissioner and Administrative Law Judge ("Scoping Ruling"), and using the
4 overall outline of the issues identified in the Scoping Ruling, Consolidated Communications of
5 California Company (U 1015 C) and Consolidated Communications Enterprise Services f/k/a
6 SureWest TeleVideo (U 7261 C) ("Consolidated") hereby submit this reply brief.¹ Consolidated
7 also supports the arguments made in the Respondent Coalition's reply brief and incorporates them
8 by reference herein, but separately submits this reply to highlight the pervasive and intense
9 competition present in Consolidated's service territory.

10 Intervenors offer a misleading portrayal of the state of competition in the retail landline
11 voice market by defining this market in an narrow and granular manner that does not comport with
12 observable market dynamics or any valid economic theory. Intervenors disregard the significance
13 of mobile wireless, "over the top" Voice over Internet Protocol ("VoIP"), fixed wireless and other
14 intermodal technologies in defining the market, which is especially inaccurate as applied to
15 Consolidated's service territory. Intervenors compound this error by advancing erroneous market
16 concentration measurements. When correctly applying these measurements to Consolidated's
17 territory, it shows that Consolidated's area is highly competitive. In addition, Intervenors suggest
18 that the Commission consider several factors, such as ILEC's earnings, service quality and
19 wholesale inputs, that are irrelevant to the Commission's inquiry on "whether intermodal
20 competition, in the decade after URF, has offered sufficient discipline to produce just and
21 reasonable prices for traditional landline services." *Scoping Memo* at 2, 7

22 Intervenors ignore the competitive aspects in Consolidated's service territory that would
23 undermine their conclusory arguments that competition is insufficient to produce just and
24 reasonable prices for landline services. Specifically, Intervenors ignore or misstate the following
25

26 ¹ Although the Scoping Memo directed the parties to use a common briefing outline, several
27 Intervenors did not follow that outline in their opening briefs and instead, used only the broad
28 categories from the outline. Accordingly, Consolidated also uses the broad headings to respond to
Intervenors' claims.

1 evidence:

- 2 • ORA's and TURN's claims of monopolistic price increases for wireline voice disregard
3 the fact that Consolidated's rate increases for basic residential service since 2006 have
4 risen less than inflation.
- 5 • ORA's Market Dominance Index ("MDI") and supporting Table 13 misstates
6 Consolidated's actual subscription figure and when the actual figure is used, it shows
7 that Consolidated has faced fierce competition from its competitors, leaving
8 Consolidated with 0% of the market that ORA has defined.
- 9 • TURN's analysis of competitive options for consumers in various counties fails to
10 include Consolidated's specific territory, which would reflect the highest percentage of
11 two and three provider options—approximately 99% in both categories, even without
12 considering mobile wireless.
- 13 • Both ORA and TURN ignore Consolidated's consistently strong service quality when
14 improperly claiming that alleged poor service quality among some URF ILECs
15 indicates ineffective competition.
- 16 • TURN's claim that carrier's "stick to their turf" and do not overbuild ignores the
17 evidence produced to TURN in response to its data requests showing that Consolidated
18 has significantly overbuilt in other Frontier's and AT&T's territories.

19 When the market is properly defined, measured, and analyzed, there is no doubt that it is
20 competitive, especially in Consolidated's service territory.

21 **II. INTERVENORS EMPLOY UNREASONABLE MARKET DEFINITIONS 22 THAT ARE ESPECIALLY MISPLACED AS APPLIED TO CONSOLIDATED**

23 Intervenor's briefs attempt to broaden and segment the market in ways that deviate from
24 the Commission's principal inquiry here, which is "whether intermodal competition . . . has
25 offered sufficient discipline to produce just and reasonable prices for traditional landline services."
26 *Scoping Ruling* at 2. To be useful in answering the Commission's "ultimate question," and to
27 remain within the Commission's jurisdiction, the market definition must be tailored to assess the
28 competitive pressures at work on "traditional landline services." Market definition should not be
based on aspirational policy objectives or incentives; it should be focused on what is actually
happening in the market. Similarly, there is no reason to assess the broader "telecommunications
ecosystem" if doing so skews the "ultimate question" regarding wireline voice service. *TURN
Opening Brief* at 13. Bifurcating the market into granular geographic or demographic units that
have no relevance to overall market dynamics is equally flawed. *See Ex. 6, AT&T (Katz) 6/1*

1 *Testimony* at 8:18-9:21; *see also* D.06-08-030 (URF Decision) at 76, 131 (repudiating the basis for
2 granular segmenting of the market).

3 The Commission should dismiss Intervenor's attempts to complicate and politicize what
4 should be a data-driven inquiry. Both as a matter of the Commission's jurisdiction and a matter of
5 sound economic principles, the market should be defined with reference to the services that exert
6 pricing pressure on wireline voice service. As part of this inquiry, the Commission should ensure
7 that all relevant services exerting such pressure are included. At least as applied to Consolidated's
8 service territory, Intervenor's exclusion of mobile wireless, fixed wireless, over-the-top Voice over
9 Internet Protocol ("VoIP") is baseless, and, if followed, would lead to inaccurate conclusions for
10 this service territory. The Commission should adopt a market definition that is designed to test the
11 competitiveness of the voice market and reach accurate results for Consolidated and other URF
12 ILECs. Intervenor's proposals do not accomplish that goal.

13 **A. Intervenor's Focus on Broadband Markets Is Inconsistent With the Scope of**
14 **the Proceeding and the Limitations on the Commission's Jurisdiction.**

15 Intervenor attempts to frame the relevant market in a manner that exceeds the
16 Commission's jurisdiction and which is not useful to the "ultimate question" in this proceeding.
17 Both TURN and ORA argue that the broadband market is a relevant market to be examined, but
18 neither shows how broadband relates to "whether intermodal competition . . . has offered sufficient
19 discipline to produce just and reasonable prices for traditional landline services." *Scoping Ruling*
20 at 2. TURN and ORA both admit that broadband is a separate market from voice, but they
21 nevertheless devote significant portions of their analyses to competitive dynamics that relate only
22 to the broadband market. *TURN Opening Brief* at 14 ("[t]here is no question that broadband
23 technology is appropriately classified as a market separate from voice"); *ORA Opening Brief* at 20
24 ("there are two relevant product markets in California's telecommunications market").

25 Intervenor fails to supply any connective tissue to make their broadband arguments
26 relevant to the "ultimate question" about voice. TURN claims that broadband and voice services
27 are all part of the same "telecommunications ecosystem," but one page later, TURN undermines
28 this characterization by insisting that there is "no question" that "broadband" is "separate from

1 voice." *TURN Opening Brief*, at 13-14. TURN argues that bundling practices in the market make
2 broadband relevant to voice offerings, but TURN offers no explanation for how competing
3 standalone broadband offerings could be pertinent to the voice market. *TURN Opening Brief* at
4 14. ORA does not even attempt to make this connection, but nevertheless proceeds to analyze
5 broadband-only market dynamics. *See e.g., ORA Opening Brief* at 20, 22-33. While a
6 consideration of bundles that include voice and the availability of broadband sufficient to enable
7 VoIP are important factors in assessing the competitive pressures on wireline voice service
8 providers, broadband-specific market mechanics do not relate to the voice market.

9 To the extent that Intervenors urge the Commission to analyze broadband markets for their
10 own sake, this also exceeds the Commission's lawful authority. ORA advances numerous
11 arguments seeking to establish Commission jurisdiction over broadband, but none can avoid the
12 prohibition on Commission intrusion into the broadband arena imposed by Public Utilities Code
13 Section 710, nor the restrictions on Commission authority over services that are purely interstate.
14 Pub. Util. Code § 710 ("[t]he commission shall not exercise regulatory jurisdiction or control over
15 . . . Internet Protocol enabled services" except pursuant to specified exceptions not applicable
16 here); Pub. Util. Code § 202 (commission authority "shall not apply to . . . interstate commerce");
17 *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, 30 FCC Rcd.
18 5601, at ¶¶ 281, 433 ("*2015 Open Internet Order*"). In the *2015 Open Internet Order*, the FCC
19 "announce[d] [its] firm intention to exercise our preemption authority to preclude states from
20 imposing obligations on broadband service that are inconsistent with the carefully tailored
21 regulatory scheme we adopt," adding that "we will act promptly, whenever necessary, to prevent
22 [*sic*, preempt] state regulations that would conflict with the federal regulatory framework or
23 otherwise frustrate federal broadband policies." *Id.*

24 Each of ORA's attempts to expand the Commission's jurisdiction into the broadband
25 market is unavailing. First, ORA argues that that an examination of the broadband market can be
26 justified under Public Utilities Code Section 701, which permits the Commission to do "all things .
27 . . necessary and convenient in the exercise of [its] power and jurisdiction." *ORA Opening Brief*,

1 at 10; Pub. Util. Code § 701. However, this statutory provision only affects the *extent* of the
2 Commission's authority over matters that are already within its jurisdiction; by its terms, it does
3 not expand the Commission's jurisdiction into new arenas, let alone those where the Commission
4 is expressly forbidden from regulating. *See Assembly of State of California v. Public Utilities*
5 *Commission*, 12 Cal. 4th 87, 103-04 (1995) ("Whatever may be the scope of regulatory power
6 under this section, it does not authorize disregard . . . of express legislative directions to it, or
7 restrictions upon its power found in other provisions of the act or elsewhere in general law.");
8 *Motion Picture Ass'n of Am., Inc. v. FCC*, 309 F.3d 796, 806 (D.C. Cir. 2002) (observing that an
9 equivalent provision of the Federal Communications Act, 47 U.S.C. § 154(i), "is not a stand-alone
10 basis of authority and cannot be read in isolation" and that it "is more akin to a 'necessary and
11 proper' clause" than an affirmative grant of authority).

12 Second, ORA claims that investigatory authority over broadband could be justified under
13 Public Utilities Code Section 314(b), because that provision permits the Commission to inspect
14 data from "any business that is a subsidiary or affiliate" of a public utility. *ORA Opening Brief*, at
15 10; Pub. Util. Code § 314(b). ORA's citation to this statute is misleading, as it omits the critical
16 limiting language that immediately follows the verbiage quoted in ORA's brief. Public Utilities
17 Code Section 314(b) is limited to "any *transaction* between the . . . telephone corporation . . . that
18 might adversely affect the interests of the ratepayers of the . . . telephone corporation." *Id.*; *see*
19 D.96-07-059 (Roseville Telephone), at 20-12 (confirming the limited nature of 314(b) to
20 transactions and matters that might adversely affect ratepayers; *see also* Assembly Bill No. 116
21 (1985-1986 Reg. Sess.). No such transaction is under consideration in this proceeding, and ORA
22 has identified none. Accordingly, Section 314(b) is simply inapplicable.

23 Third, ORA cites to the Commission's generic discovery authority, none of which expands
24 the Commission's jurisdiction into the province of IP-enabled services such as broadband. *ORA*
25 *Opening Brief*, at 10-11. ORA references Resolution ALJ-195, which includes a general reference
26 to the Commission's authority to "obtain information from public utilities" and "those who deal
27 with them." Res. ALJ-195. To the extent that ORA is implying that "those who deal with them"

1 includes unregulated broadband affiliates or service divisions, this suggestion is incorrect.
2 Resolution ALJ-195 does not—and could not—change the statutory restrictions on the
3 Commission's authority. In any case, Resolution ALJ-195 pre-dates Public Utilities Code Section
4 710, which would foreclose ORA's suggested reading of the resolution. ORA's reference to
5 Public Utilities Code Section 582 is equally misplaced, as that statute confers no authority over
6 broadband services or public utility affiliates. *ORA Opening Br.* at 11.

7 Fourth, ORA claims that Public Utilities Code Section 710 itself contains exceptions that
8 empower the Commission to examine broadband markets, but ORA's view would cause the
9 exceptions to swallow the rule. *ORA Opening Br.* at 11. ORA proffers Public Utilities Code
10 Section 710(f), but this sub-section is extremely narrow, relating only to the Commission's ability
11 to "monitor and discuss VoIP services" for the purpose of reporting VoIP-related complaints to the
12 Legislature and/or the FCC and to "respond informally to customer complaints." Pub. Util. Code
13 § 710(f). Nothing in this exception permits the Commission to regulate, investigate, or analyze
14 VoIP services except related to the reporting and resolution of complaints. ORA also cites Public
15 Utilities Code Section 710(c)(4), but that sub-section only concerns forbearance petitions
16 submitted to the FCC that fall within Public Utilities Code Section 716. Pub. Util. Code §§ 710,
17 716. No such petition is pending and none has been cited in this proceeding as relevant to the
18 issues being addressed here.

19 Fifth, ORA offers a tortured interpretation of the FCC's *2015 Open Internet Order*
20 whereby ORA concludes that "Broadband Internet Access Service" may be regulated by
21 California because the FCC deemed that service a "telecommunications service." *ORA Opening*
22 *Br.* at 11. This interpretation is at odds with the plain language of the *2015 Open Internet Order*,
23 which unequivocally deems BIAS an interstate service. *2015 Open Internet Order*, ¶¶ 431, 433
24 ("Today, we reaffirm the Commission's longstanding conclusion that broadband Internet access
25 service is jurisdictionally interstate for regulatory purposes."). Moreover, the term
26 "telecommunications service" does not relate to the statutory framework under which the
27 Commission's public utility authority is derived. A "telephone corporation" is not the same as a

1 provider of "telecommunications service," and the FCC's reclassification of BIAS has no impact
2 on the meaning of "telephone corporation" under California's statutory scheme. *See* 47 U.S.C.
3 § 153(50) (definition of "telecommunications service"); Pub. Util. Code § 234 (definition of
4 "telephone corporation"). ORA's citations to opinions in other jurisdictions pertaining to the
5 regulatory classification of VoIP under those states' own statutory schemes have no bearing on the
6 meaning of California's scheme, which includes an explicit bar on regulation of VoIP and IP-
7 enabled services. Pub. Util. Code § 710.

8 Sixth, ORA cites to broad language from Public Utilities Code Section 709 by which the
9 Legislature has articulated some of the Commission's regulatory objectives. *ORA Opening Br.* at
10 12. None of these statements of Legislative intent suggest that the Commission can—or should—
11 reach beyond its jurisdiction to pursue these objectives. Indeed, the Commission should try to
12 "encourage the development and deployment of new technologies" and "remove barriers to open
13 and competitive markets," but these goals must be pursued within the Commission's lawful
14 authority. Pub. Util. Code § 709.

15 Seventh, and finally, ORA suggests that that the Commission has independent authority to
16 regulate broadband pursuant to 47 U.S.C. Section 1302(a) (also known as "Section 706" of the
17 Telecommunications Act of 1996). ORA's reliance on this provision is misguided, as any
18 Commission actions under Section 706 must be consistent with the Commission's subject matter
19 jurisdiction and not in conflict with other federal or state laws. Although ORA principally relies
20 on the D.C. Circuit's decision in *Verizon v. FCC* construing that provision (*Verizon v. FCC*, 740
21 F.3d 623 (D.C. Cir. 2014), ORA misconstrues and exaggerates this authority. *ORA Opening Br.* at
22 13. The holding of the *Verizon v. FCC* case pertained to the legality of the FCC's first *2010 Open*
23 *Internet Order*, which was largely vacated; its holding cannot be read to support wide-ranging
24 broadband regulation such as what ORA and TURN are proposing here. *Verizon*, 740 F.3d at 637.
25 Section 706 does not give state commissions the power to adopt rules for services that are not
26 within their subject matter jurisdiction—*i.e.*, services that they do not already regulate. *In re*
27 *Preserving the Open Internet*, GN Docket No. 09-191, *Report and Order*, FCC 10-201 (rel. Dec.

23, 2010), at ¶ 119 (hereinafter, "2010 Open Internet Order").

By its plain terms, Section 706(a) applies to "[t]he [FCC] and each State commission *with regulatory jurisdiction* over telecommunications services" and only permits state commissions to use "regulating methods" already available to them. 47 U.S.C. § 1302(a) (emphasis added). The Commission's subject matter jurisdiction is limited to intrastate services and expressly excludes interstate services such as broadband and VoIP. *See* Pub. Util. Code § 202; 47 U.S.C. §§ 151-152; *Louisiana Public Serv. Comm'n v. FCC*, 476 U.S. 355, 360 (1996); *Ivy Broad. Co. v. AT&T Co.*, 391 F.2d 486, 490 (2d Cir. 1968) ("this broad scheme for the regulation of interstate service by communications carriers indicates an intent on the part of Congress to occupy the field to the exclusion of state law"); D.82-03-070 (acknowledging jurisdictional limitations in resolving TURN complaint case against Pacific Telephone). In any case, actions under Section 706 would have to be tailored to "encourage deployment . . . of advanced telecommunications capability[ies]" by seeking to "promote competition" and "remove barriers to infrastructure investment." 47 U.S.C. § 1302(a). ORA's proposals to reverse URF would have the opposite effect, so Section 706 is inapplicable.

Both as a matter of law, based on unavoidable limitations on the Commission's authority, and as a consequence of how the Commission has framed the "ultimate question" in this proceeding, an investigation of broadband is categorically irrelevant. ORA and TURN's broadband arguments should be ignored to the extent that they deviate from the goal of evaluating competitive pressures on traditional wireline service.²

B. Intervenor Unreasonably Discount the Significance of Mobile Wireless Competition In Defining the Voice Market.

In defining the voice market, ORA and TURN both rely on the astonishing proposition that mobile wireless service is not a relevant factor in the voice market. Even though it flies in the face of common sense and any realistic economic assessment, Intervenor's cling to this view because their characterizations of the market as uncompetitive could never be sustained with wireless

² Without waiving the positions presented herein regarding limitations on the Commission's jurisdiction, Consolidated has nevertheless demonstrated that its broadband market is robustly competitive.

1 included. If wireless carriers are included in defining Consolidated's service territory, for
2 example, ORA and TURN would have to admit that there are at least *five well-established*
3 *facilities-based alternatives* to Consolidated's voice service. ORA and TURN's attempts to
4 exclude mobile wireless service from the voice market should be resisted to ensure that an
5 accurate picture of Consolidated's market is considered.

6 Intervenor's offer somewhat different justifications for their views that mobile wireless is a
7 distinct market, but none is persuasive. TURN presents a novel theory that wireless is only a
8 "one-way" substitute for wireline service, but even if this were true, TURN reaches the wrong
9 conclusion. *TURN Opening Br.* at 10. Whether or not wireline and wireless substitution is
10 symmetric, TURN's admission that "[w]ireless competes with wireline voice" is sufficient to find
11 that the wireless service is a substitute for wireline service, thereby exerting competitive pressure
12 and pricing constraints on wireline service. *Id.* at 9; *see also* Ex. 54 *TURN (Roycroft)* 6/1
13 *Testimony* at 33:1-4 ("wireless voice services place a competitive constraint on wireline voice
14 service providers."). Even under TURN's view, wireless service is a substitute in the only "way"
15 that matters for this proceeding—it is a clear alternative if consumers are unhappy with wireline
16 service. Indeed, if substitution is only uni-direction, and wireline service cannot be an effective
17 substitute for wireless, that only makes wireless an even more powerful competitor. Accordingly,
18 TURN's theory provides further support for the robust competition that exists in California today,
19 and especially in Consolidated's territory, where wireless coverage is ubiquitous.

20 Intervenor's also assert that wireless is not an effective substitute to wireline service,
21 because significant portions of the population have chosen to retain both a wireline and wireless
22 phone. TURN and ORA offer inconsistent figures to support this claim, but in either case, they
23 ignore the most meaningful data on the question of wireless substitution.³ The CDC wireless
24 substitution study demonstrates that the number of "wireless only" households is large and
25 growing, and that there are only 5.5% of California adults who live in "wireline only" households.

26
27
28 ³ TURN claims that the number of households who retain both services is 55%, and ORA asserts
that it is "nearly two-thirds." *TURN Opening Br.* at 10; *ORA Opening Br.* at 21.

1 National Center for Health Statistics, "National Health Interview Survey Early Release Program,"
2 Table 1 (rel. Aug. 2016) (issued by Center for Disease Control), available at www.cdc.gov, relied
3 on by Ex. 41, *Charter/Comcast (Topper) 6/1 Testimony* at 8, n.14; Ex. 28, *Cox (Gillan) 6/1*
4 *Testimony* at 7-8. The FCC Local Competition data further confirms that wireless lines are
5 growing at the expense of wireline lines. Ex. 69, *Consolidated 6/1 Supplemental Response* at 3:9-
6 12 (citing FCC 2006 and 2013 Local Competition Reports). Some households may choose to
7 retain both wireline and wireless service, but since the service platforms are functional equivalents
8 in terms of the ability to make and receive voice calls, the data show that customers can—and will
9 —shift their usage exclusively to wireless service if they are not satisfied with their wireline
10 service. These arguments also ignore the sound economic principle that price-constraining
11 competition only needs to occur at the margin to be an effective constraint. D.06-08-030 (URF
12 Decision) at 132; Ex. 41, *Comcast/Charter (Topper) 6/1 Testimony* at n.8; Ex. 41, *Cox (Gillan)*
13 *6/1 Testimony* at 8, 13.

14 The functional equivalency between wireless and wireline voice service is undeniable in
15 Consolidated's area, which is uniformly flat and covered nearly 100% by the four major wireless
16 carriers. See Appendix A (USGS Map);⁴ Ex. 69, *Consolidated 6/1 Supplemental Responses* at
17 3:20-21. Essentially every household in Consolidated's service territory could become "wireless
18 only" and still make and receive calls if Consolidated did not continue to provide reliable, high-
19 quality, reasonably-priced service. TURN suggests that substitution may be limited by "coverage
20 gaps," but there are no such gaps in Consolidated's service territory.

21 ORA offers blanket statements that wireless broadband speeds are not sufficient to make
22 mobile broadband a substitute for wireline broadband. *ORA Opening Br.* at 23-25. This argument
23 relies on an unreasonably narrow and aspirational definition of broadband that fails to grasp the

24 _____
25 ⁴ Pursuant to the California Evidence Code Section 452, the Commission should take official
26 notice of this United States Geological Survey map. D.87-12-018 ("The Commission has the
27 option of taking official notice of all matters which may be judicially noticed in civil court.");
28 *Union Transp. Co. v. Sacramento County*, 42 Cal.2d 235, 267 (1954) (Courts will take judicial
notice of topographical map of United States Geological Survey); *Planned Parenthood Shasta-
Diablo, Inc. v. Williams*, 10 Cal.4th 1009 (1995) (certiorari denied 520 U.S. 1133) (Trial or
reviewing courts may properly take judicial notice of government maps and surveys.).

1 manner in which consumers are purchasing broadband in the marketplace. However, ORA's
2 claim is also factually inaccurate as to Consolidated's area. The California Broadband Map
3 reflects high levels of wireless broadband coverage, with 25 Mbps download available in the vast
4 majority of the territory. *See App. A to Consolidated Opening Br.*

5 ORA and TURN also rely on conclusory and unfounded statements regarding wireless
6 substitutability that should be given no weight. ORA claims that "[m]ost consumers subscribe to
7 both fixed and mobile broadband, and use the latter only when it is impractical to use the former—
8 e.g. when they are not at home." *ORA Opening Br.* at 28. This argument is offered without
9 citation and is less likely to be true than the counter-proposition, which is that consumers will use
10 their wireless devices whenever and wherever they are available. TURN also claims that mobile
11 devices are complements because they sometimes rely on "Wi-Fi" enabled by wireline technology,
12 but TURN fails to explain how this makes wireless a "complement." *TURN Opening Br.* at 17.
13 Rather than showing wireless to be a complement to wireline service, this argument demonstrates
14 that there is significant overlap between usage of wireline and wireless networks and broadband
15 usage, such that they can be substitutes for each other in meaningful ways.

16 None of Intervenor's arguments can divert from the strong evidence that customers are
17 dropping wirelines in large and increasing numbers in favor of mobile wireless service. Especially
18 in Consolidated's area, where wireless competition is strong and the terrain is flat, the power of
19 wireless substitutability cannot be ignored.

20 **C. Intervenor's Discounting of Over-The-Top VoIP, Fixed Wireless and Other**
21 **Technologies Make Intervenor's Market Definition Inaccurate As Applied to**
22 **Consolidated.**

23 Compounding their myopic views of wireless substitution, Intervenor's market definitions
24 ignore other competitive technologies that apply significant pricing pressure on Consolidated and
25 other wireline providers. ORA asks the Commission to completely exclude "over the top" VoIP
26 from the market definition, but ORA cites absolutely no factual support for this view. *ORA*
27 *Opening Br.* at 34-35. ORA offers only broad generalizations that fail to support its conclusion.
28 ORA observes that "the geographic availability of OTT is governed by the availability and pricing

1 of broadband," but ORA fails to explain how this fact would be limiting. *ORA Opening Br.* at 34-
2 35. If a provider offers broadband-only service throughout its service territory, as Consolidated
3 does in its service area, then "over the top" VoIP is available everywhere that Consolidated's voice
4 service is available. There is no competitive disadvantage evident in that situation, especially
5 where "over the top" VoIP could be accessed through entirely different networks, such as Comcast
6 and Wave Broadband's networks in Consolidated's area. ORA also claims that the "facilities-
7 based provider" is in a position to "manage and limit the demand for the competing dependent
8 OTT service." *ORA Opening Br.* at 35.⁵ This argument also fails because the facilities-based
9 provider could only do that if it hurt its own service platform at the same time. ORA's
10 speculations are meritless and could not happen in Consolidated's service territory, where there are
11 multiple competing networks where consumers could turn if they are unhappy with the service
12 capabilities that might enable "over the top" VoIP. As the Commission noted in the URF
13 Decision, "over the top" VoIP providers like Vonage and Skype continue to be real competitors to
14 traditional wireline service, so they cannot be omitted from a valid assessment of the market.
15 D.06-08-030 (URF Decision) at 4, 74-75.

16 Intervenor's dismissal of fixed wireless is also erroneous, especially as applied to
17 Consolidated. ORA and TURN allege that fixed wireless should be ignored because it suffers
18 from limited availability, functional limitations, and low speed. None of these characterizations
19 are true as to Consolidated's territory, so Intervenor's refusal to consider fixed wireless in their
20 market definitions leads to inaccurate measurements of the market. The California Broadband
21 Availability Map shows that Consolidated's service territory is 100% blanketed with fixed wireless
22 coverage. This information from the California Broadband Map is attached hereto as Appendix
23 B.⁶ Even TURN's fixed wireless availability map shows meaningful fixed wireless coverage in
24 Consolidated's area. *TURN Opening Br.* at 33. TURN's concern regarding interference with "line

25 ⁵ If ORA's argument is an oblique reference to "throttling" or other similar data management
26 practices, those practices have already been addressed by the FCC and are contrary to current law.
27 *See, e.g., 2015 Open Internet Order*, at ¶ 4.

28 ⁶ Fixed wireless providers in Consolidated's territory include CalNet, Central Valley, Digital Path
Inc., RuralNet Wireless LLC and Succeed.Net.

1 of sight” is also misplaced as to Consolidated’s service territory, as the area is almost entirely flat
2 with few physical obstacles to block signals. Speculations about low speed are also untrue, as the
3 California Broadband Availability Map confirms speeds of 25 Mbps or higher throughout
4 Consolidated’s footprint. These facts mean that, contrary to Intervenor’s expectations, there is a
5 viable fixed wireless platform in southwestern Placer County and Northeastern Sacramento
6 County, where Consolidated serves as an ILEC.

7 Intervenor’s failure to recognize fixed wireless is at odds with the FCC’s views regarding
8 fixed wireless platforms. In formulating the FCC’s rules governing reductions in high-cost support
9 in areas served by an “unsubsidized competitor,” the FCC included fixed wireless in its definition
10 of “unsubsidized competitor,” thereby recognizing that fixed wireless service can provide a valid
11 substitute for wireline broadband and voice offerings. *USF/ICC Transformation Order*, GN
12 Docket Nos. 09-51, *Report and Order and Further Notice of Proposed Rulemaking*, 11-161 (Rel.
13 Nov. 18, 2011). Neither ORA nor TURN offer valid evidence that could upset the FCC’s
14 conclusion. Where it is available, fixed wireless must be considered a part of the market that
15 delivers broadband and voice service. If the Commission were to ignore this impact, it would
16 reach inaccurate conclusions regarding service areas like Consolidated’s territory.

17 Intervenor’s dismissal of the satellite platform is also misplaced, at least as to the
18 broadband market. *ORA Opening Br.* at 31-33; *TURN Opening Br.* at 18-20. While satellite
19 service may have certain latency issues that affect certain real-time applications, satellite providers
20 are significant players in the broadband and video markets, and their large, national platforms and
21 broad-based branding gives them advantages in selling video and broadband bundles that cannot
22 be ignored. Ex. 5, *AT&T (Aron) 6/1 Testimony* at 33; Ex. 42, *Charter/Comcast (Topper) 7/15*
23 *Testimony* at 26:1-10, n.68; Ex. 41, *Charter/Comcast (Topper) 7/15 Testimony* at 28:1-5, n.73,
24 29:1-3, 30:19-31:2, n.82, 84, 41:22-42:2, n.114, n.115, 54.

25 ORA and TURN define the relevant markets to be examined in a manner that exclude key
26 market players. These omissions lead to inaccurate conclusions regarding the competitiveness and
27 dynamics of voice and broadband markets, as discussed below.

1 **D. ORA Unreasonably Limits The Broadband Market to 25 Mbps Download and**
2 **3 Mbps Upload.**

3 ORA confines its analysis of the broadband market to a single service: 25 Mbps download
4 and 3 Mbps upload. In doing so, ORA ignores all other broadband service offerings and all other
5 features of broadband service that consumers find meaningful in the market. ORA has not shown
6 that, from a consumer or economic perspective, 25/3 service should be built into the market
7 definition in assessing broadband markets. This leads to a short-sighted and fundamentally
8 inaccurate assessment of the competitive pressures that exist in the broadband market, including in
9 Consolidated's service territory.⁷

10 ORA's only justification for focusing solely on 25/3 is that it is FCC's forward-looking
11 definition of "broadband." *ORA Opening Br.* at 20. However, the FCC's aspirational broadband
12 goal is a policy objective, not a basis for defining the broadband market. The record is clear that
13 the broadband market includes a multiplicity of service offerings at a wide variety of speeds, and
14 all of these offerings should be part of the "market" in order to get a clear sense of how that market
15 is operating. *See e.g., Ex 5, AT&T (Aron) 6/1 Testimony* at 32; *Ex. 41, Charter/Comcast (Topper)*
16 *6/1 Testimony* at 29-31. ORA's focus on 25/3 is not grounded in consumer behavior or economics,
17 and ignores important evidence that meaningfully impacts the competitive pressures facing voice
18 and broadband providers.

19 ORA also implies that the parties or the Commission are under a requirement to use 25/3
20 as the broadband market definition. However, 25/3 is not a "benchmark" speed in the sense that
21 carriers are required to achieve it. *2015 Broadband Progress Report and Notice of Inquiry on*
22 *Immediate Action to Accelerate Deployment*, GN Docket No. 14-126, FCC 15-10 (rel. Feb. 4,
23 2015, ¶ 19 *et seq.* ("Because it is an evolving standard, and there is no single standard for what
24 should qualify as advanced service, the Commission must exercise discretion when it conducts its
25 annual inquiry.")). In fact, the FCC's actual broadband benchmark for Connect America Fund

26 ⁷ ORA's approach conflates "market definition" with "market measurement" and systematically
27 avoids considering real broadband alternatives that would otherwise be measured. This approach
28 skews ORA's market evaluation and cannot guide the Commission's consideration of the issues
here.

1 support and for rural carrier ETC designations is 10 Mbps download and 1 Mbps upload. *See,*
2 *e.g., Connect America Fund*, FCC 14-190 ¶ 2. By dissociating its current requirements from its
3 visionary broadband goal, the FCC itself implicitly recognizes that an assessment of the market
4 would be unreasonable if it focused on only the forward-looking objective rather than the features
5 of the market as it exists today.

6 If, notwithstanding its jurisdictional limitations, the Commission reaches conclusions in
7 this proceeding specific to broadband markets, those conclusions must be informed by a market
8 definition that includes all relevant features. For example, if customers are flocking to 10/1 Mbps
9 offerings instead of 25/3, that trend cannot be ignored. The market definition should be grounded
10 in an assessment of what service offerings impose competitive pressure on each other in the
11 broadband market, and the record is clear that the range of relevant broadband services is far
12 greater than just the 25/3 offerings when viewed through this lens.

13 **E. Intervenor's Make Unsupported Claims Regarding Geographic and**
14 **Demographic Differences That Cannot Apply to Consolidated.**

15 Intervenor's also urge the Commission to segment the market into demographic and
16 geographic units, claiming that specific market failures will emerge if granular analysis is
17 considered. *See e.g., Greenlining Opening Br.* at 6-13; *CforAT Opening Br.* at 1, 3-10; *TURN*
18 *Opening Br.* at 2. As the Respondent Coalition has demonstrated, markets do not operate in such
19 a dispersed or piecemeal manner. *Respondent Coalition Opening Br.* at 11-12 (citing D.06-08-030
20 (URF Decision), CD 2015 Report, and the FCC Report, *Voice Telephone Services: Status as of*
21 *June 30, 2015*). The URF Decision correctly concluded that markets operate on a broad scale and
22 that competitive pressures in the market as a whole will benefit all consumers even if every
23 competitive offering is not present in every area. D.06-08-030 (URF Decision), at 74, 142.

24 Even if there were a basis to analyze markets at the census-block level, it would not change
25 the lens through which Consolidated's service territory is examined. The record is clear that
26 Consolidated serves a specific, regional market in which its service options are offered uniformly
27 to the public. There is no record evidence of price or service differential within that footprint, and
28 no evidence of price discrimination or geographic price disparities that would support the need to

1 segment the market. Intervenor's attempts to analyze the voice and broadband markets in a
2 segmented manner cannot be supported, and is especially unreasonable as applied to
3 Consolidated's relatively localized, regional service territory.

4 **F. Intervenor's Focus on Wholesale Inputs Is Misplaced.**

5 Intervenor's attempts to include wholesale service in the definition of the market for retail
6 voice and broadband service confuse the relationship between these markets. The wholesale
7 market relates to entirely different services from those offered to consumers in the retail market,
8 and Intervenor has not established an analytical connection between the two. Rather,
9 Intervenor implies that control of wholesale markets could lead to manipulation of retail markets,
10 but there is no evidence of this occurring. *Id.* at 142. The discussion of wholesale inputs is a
11 distraction from any realistic analysis of the retail market.

12 In Consolidated's case, implications about the wholesale market are especially unfounded.
13 Consolidated is a relatively small player in markets for special access and other wholesale inputs
14 that certain competitors might utilize. These services are almost universally regulated, so there are
15 already regulations in place to address the potential for unreasonable limitations on wholesale
16 inputs, even if there were evidence of such a phenomenon. Moreover, the focus on wholesale
17 markets is tangential at best as applied to Consolidated because there are facilities-based wireline
18 providers—who have built their own networks—blanketing 99% of Consolidated's service
19 territory. In such an environment, wholesale issues are irrelevant. *Ex. 69, Supplemental*
20 *Responses of Respondents Consolidated to Information Requests 6/1.*

21 **III. INTERVENORS OFFER MARKET MEASUREMENTS THAT ONLY**
22 **CONFIRM THE COMPETITIVE NATURE OF CONSOLIDATED'S**
23 **TERRITORY.**

24 If voice and broadband markets are properly defined to include all relevant competitors
25 and competing services, there can be no doubt that Consolidated's service territory is robustly
26 competitive. Intervenor's assessments of competition rely on inaccurate information and market
27 definitions that ignore Consolidated's circumstances. If these errors are corrected, the competitive
28 nature of Consolidated's service territory is clear even under Intervenor's market measurements.

1 **A. Nothing In Intervenor's Briefs Negate the Numerous Competitive Alternatives**
2 **in the Voice Market in Consolidated's Service Territory.**

3 In its opening brief, Consolidated summarized significant information from the California
4 Broadband Availability Map that shows the presence of facilities-based cable competition
5 throughout Consolidated's service territory at speeds well above the 25/3 Mbps standard that ORA
6 uses to define the broadband market. *See App. A to Consolidated Opening Br.* Even ORA admits
7 that "where there are independent local loop facilities in residential customer promises, then there
8 exists full facilities based competition that should be included in evaluation of a competitive
9 market for telecommunications service in California." *ORA Opening Br.* at 33-34. This is
10 precisely the situation that exists in Consolidated's service territory, where a combination of
11 Comcast and Wave Broadband provide an alternative to Consolidated's voice and broadband
12 offerings at essentially every customer location in the area. Nothing in Intervenor's briefs or
13 testimony contradicts this reality.

14 The same is true of the wireless data identified in Consolidated's opening brief.
15 Consolidated identified clear evidence, backed by the California Broadband Availability Map, that
16 shows Consolidated service territory is approximately 99% covered by four different wireless
17 carriers, each of which offer speeds exceeding 25 Mbps download. None of these data points can
18 be disputed as applied to Consolidated's service territory.

19 Intervenor's paint with a broad brush in their indictment of the competitive market, but
20 even if their views were correct, they fail to correctly assess Consolidated's service territory,
21 where the propositions upon which TURN and ORA rely are not true. TURN says that "effective
22 competition does not exist," but it clearly does in Consolidated's area. *TURN Opening Br.* at 3.

23 **B. Correct Applications of Intervenor's Market Concentration and Service**
24 **Availability Models Prove That Consolidated's Service Territory Is Robustly**
25 **Competitive.**

26 Both ORA and TURN rely significantly on market share metrics in analyzing the relevant
27 market, but these market share measurements use inaccurate inputs and reach false conclusions as
28 to Consolidated. ORA relies principally on a "Market Dominance Index" that Dr. Selwyn appears
to have invented to measure the extent to which firms' customer subscriptions deviate from an

1 equal, mathematical division of the market. *ORA Opening Br.* at 40-41. ORA's findings are
2 summarized in Table 13 to ORA's testimony, and that chart states that Consolidated's market has
3 an "MDI" of 1.47, with 1.00 being an equal division of the market. Even setting aside the broken
4 assumptions that inform the MDI model—including that competitive firms will share the market
5 equally—ORA's application of the MDI is inaccurate as to Consolidated.

6 ORA uses incorrect subscribership data for Consolidated, which grossly overstates the
7 portion of the 25/3 Mbps customers Consolidated serves in its ILEC territory. This is evident
8 from a comparison of the figure depicted in column (6) of Table 13 to Dr. Selwyn's testimony
9 with the underlying source data from Information Requests 6(a), 6(b), and 6(e). In Table 13, ORA
10 ascribes a subscription figure to Consolidated, but the census block level information in Appendix
11 B in response to these Information Requests shows this figure to be zero in Consolidated's ILEC
12 territory.⁸ ORA has mistakenly utilized the 25/3 subscribership figures in Consolidated's CLEC
13 territory for this chart, but those figures should have no bearing on the market share in the ILEC
14 territory or the extent to which Consolidated's ILEC territory is competitive.

15 When the actual zero figure is used in Dr. Selwyn's Table 13, what emerges is that
16 Consolidated has 0% of the market that ORA has defined. This means that 100% of that alleged
17 market is controlled by Consolidated's competitors. Of the households that ORA alleges (using
18 publicly-available census data) have access to 25/3 service, Consolidated has none of them.
19 Indeed, ORA's figures in columns (3) and (4) of Table 13 suggest that there is 100% availability of
20 25/3 in Consolidated's territory, but all of that availability is from Comcast and Wave Broadband.
21 The California Broadband Availability Map confirms this result. If followed to its logical
22 conclusion, and applied without correction, ORA's allegations of market concentration are based

23 _____
24 ⁸ Subscribership in Consolidated's ILEC service territory can be derived from Appendix B2 in
25 response to these Information Requests by reviewing the census blocks for Placer County and
26 Sacramento County as reflected by the third through fifth census block digits of 061 and 067,
27 respectively. *See Ex. 68, Consolidated's Final Responses to Information Requests 6(a), (b) and*
28 *Request 5, CA ILEC FCC 477_1214_Subscribers, Commission Only; CA ILEC FCC*
477_1214_Deployment; CA ILEC FCC 477_0615_Subscribers, Commission Only; CA ILEC
FCC 477_0615_Deployment, Confidential and Further Responses to IR 5-6.

1 on the success of Consolidated's facilities-based competitors. This is a material error that actually
2 confirms Consolidated's position that its territory is robustly competitive.⁹

3 TURN's metrics for measuring market share would also demonstrate the competitiveness
4 of Consolidated's service territory if correct and complete data were used in Consolidated's area.
5 On page 30 of its Opening Brief, TURN presents a list of the number of providers from which
6 consumers in various counties can choose. Notably, neither Placer County (where Consolidated's
7 principal ILEC operations reside) nor Consolidated's specific territory is displayed. Based on the
8 Broadband Availability Map, and counting only the facilities-based providers that offer voice and
9 broadband, Consolidated's service territory would have the highest percentage of "two provider"
10 availability on TURN's entire chart (it would be 99%). If fixed wireless, which also covers
11 substantially all customer locations, were included, Consolidated's area would be the highest by
12 far on the "three provider" column (again, the result would be 99%). If wireless carriers were
13 added to this list, as they should be because they compete ubiquitously in both the voice and
14 broadband markets against Consolidated, Consolidated would be literally "off the chart" on
15 TURN's availability measurement.

16 A close look at the data inputs and measurement mechanisms advanced by ORA and
17 TURN reveals that their own metrics would deem Consolidated's territory clearly competitive.
18 The Commission should carefully scrutinize Intervenor's conclusions about a lack of competition
19 because they cannot apply to Consolidated.

20 **IV. NONE OF INTERVENORS' MARKET ANALYSIS FACTORS UNDERMINE**
21 **THE COMPETITIVE NATURE OF CONSOLIDATED'S SERVICE**
22 **TERRITORY.**

23 As part of their analysis of the voice and broadband markets, ORA and TURN proffer
24 various indicators that they allege are symptomatic of a non-competitive environment.
25 Consolidated regards these issues as a distraction because there is no reason to credit indirect
26 alleged indicators of competition when the purpose of the proceeding is to measure the state of

27 ⁹ Even a comparison of Consolidated's actual ILEC subscribership to the total number of
28 households used in Dr. Selwyn's Table 13 shows a small Consolidated market share. *See Id.*

1 competition directly. Intervenor's claims of monopolistic pricing and market dynamics, their
2 implications regarding service quality, their unfounded allegations regarding excessive earnings,
3 and their tangential claims about the wholesale market are not valid substitutes for an examination
4 of competition. The Commission should focus on quantitative and qualitative measurements of
5 the state of competition as it is actually experienced for the URF ILECs. To the extent that
6 TURN's and ORA's heuristics are considered, the Commission should recognize that Intervenor's
7 provocative propositions are inapplicable to Consolidated. Despite their stated commitments to
8 data-driven and granular analysis, TURN and ORA both overlook and misconstrue Consolidated's
9 circumstances by painting with an overly-broad brush.

10 **A. Intervenor's Claims About Monopolistic Pricing Behavior Are Unfounded and**
11 **Inapplicable to Consolidated.**

12 Both ORA and TURN suggest that ILEC pricing behavior since the URF Decision points
13 to a lack of competition in the market. *ORA Opening Br.* at 5; *TURN Opening Br.* at 53-55.
14 These claims are erroneous as to all ILECs, but they are particularly inapplicable to
15 Consolidated.¹⁰ ORA claims that "basic wireline prices have increased by more than 40% since
16 2008" *ORA Opening Br.* at 5. This broad assertion cannot be attributed to Consolidated,
17 whose basic residential rate has only risen approximately 16.34% since 2006, which is less than
18 inflation over that same timeframe.¹¹ *Ex. 69, Consolidated's Supplemental Responses to*
19 *Information Requests* at 7. In its zeal to overstate the pricing increases by ILECs since 2008, ORA
20 excluded Consolidated from the figure on page 44 of its testimony. ORA's Opening Brief (at 44)
21 and Dr. Selwyn's testimony (*Ex. 16* at 78, *Figure 2*) fail to provide supporting evidence for the
22 pricing inputs for Dr. Selwyn's figure. If Dr. Selwyn were to include Consolidated's price

23 ¹⁰ As noted in the Respondent Coalition's reply brief, ILEC rates were set at artificially low rates
24 prior to URF, so some increases in price were expected. *Ex. 7, AT&T (Aron) 7/15 Testimony* at 5;
Evid. Hr'g. Tr. at 86-87 (Aron).

25 ¹¹ According to the Consumer Price Index, inflation increased 19.4% from 2006 through 2016.
26 *See* United States Department of Labor, Bureau of Labor Statistics, The Consumer Price Index
27 Calculator, available at http://www.bls.gov/data/inflation_calculator.htm (last visited August 25,
28 2016). The Commission should take notice of the Consumer Price Index pursuant to California
Evidence Code section 452. *Mission Springs Water District v. Verjil*, 218 Cal. App. 4th 892 (4th
Dist. 2013).

1 changes over the equivalent time period, the figure would change significantly. *See* Ex. 67
2 (Consolidated's Initial Responses to Information Request 8); Ex. 69 (Consolidated's Supplemental
3 Responses to Information Requests) at 7; *see also* TURN Opening Brief at 56, Figure 2.¹²

4 The reasonableness of Consolidated's pricing behavior since URF is consistent with
5 TURN's "Figure 2" on page 56 of its opening brief. That chart also shows modest increases in
6 Consolidated's (formerly SureWest's) rates from 2006 to 2015. None of Consolidated's pricing
7 adjustments reflect monopolistic behavior or anything other than a company attempting to raise its
8 prices commensurate with inflationary increase in costs.

9 ORA makes the same argument relative to broadband pricing, alleging that there have been
10 "steady increases for all of the major wireline broadband providers" since URF. *ORA Opening*
11 *Brief* at 55. At least as applied to Consolidated, this statement is misleading. ORA's source data
12 for this claim is Table 14 of Dr. Selwyn's testimony (Exhibit 16), which in turn refers to
13 information presented to ORA in response to ORA Data Request 1-3. The information in that
14 table does reflect a price increase for Consolidated's stand-alone broadband offering from 2006 to
15 2016, but, significantly, it also reflects a sextupling of the applicable download speed attendant to
16 that offering. A comparison of equivalent speeds reveals that Consolidated's prices actually
17 decreased over time. For example, Consolidated's stand-alone non-promotional price for high
18 speed internet at 18/18 *decreased* by \$10 in 2015. Table 14 includes incorrect prices for this
19 offering in 2015. *See* Ex. A-13, *Consolidated's Attachment to ORA 2-3*, Confidential at Row 111,
20 attached to Ex. 16 (Selwyn June 1, 2016 Testimony).¹³ The notion that prices are increasing is
21 meaningless unless compared to the advances inherent in the service. Consolidated's stand-alone
22 broadband pricing has increased since 2006, but the features of the service have radically

23 _____
24 ¹² Consolidated requests that the Commission take judicial notice of its website that provides a
25 summary of URF company rates. California Public Utilities Commission, Communications
26 Division, URF Carrier Residential Basic Service Rates: 2006-2015, available at
27 http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/C
28 [ommunications_-](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/C)
[_Telecommunications_and_Broadband/URFCarrierBasicServiceRatesbyYear2015.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/C).

¹³ Table 14 also includes incorrect prices and speeds for Consolidated's offerings in 2006-2007.
Id. at Row 42.

1 advanced, thereby increasing the attractiveness, value, and cost of the service. Accordingly,
2 customers are paying more, but they are also getting a lot more. A close look at ORA's source
3 data makes this clear.

4 Although the actual data belie any claim that Consolidated's voice or broadband pricing
5 has been excessive, TURN also attempts to support its pricing theory by citing to the testimony of
6 Consolidated's witness, Mr. Shultz, who testified that Consolidated continued to lose overall
7 access lines at approximately the same rate after raising its standalone voice offering to \$21.99
8 (the lowest rate of all of the ILECs). *TURN Opening Br.* at 10-11. TURN claims that this
9 demonstrates the presence of market power, but there are several problems with this claim. First,
10 Consolidated's rates did not increase significantly enough to result in significant customer
11 attrition, even in a competitive market. Raising a rate from \$19.99 to \$21.99 that had not been
12 raised for five years is not a significant enough event to trigger a meaningful demand elasticity
13 response. *See TURN Opening Br.* at 56 (Figure 2). Second, Mr. Shultz's statement confirmed that
14 Consolidated continues to lose access lines, and there was no indication as to whether those lines
15 were for standalone service or from some other service. *Evid. Hr'g.* at 103:8-19. Third, Mr.
16 Shultz explicitly noted that the increase was related to specific regulatory policy changes, which
17 undercuts any suggestion that market power was involved in the decision to raise rates. *Evid.*
18 *Hr'g.* at 102:8-103:4. Fourth, Mr. Shultz noted that the price increase was recent and that the
19 effects of it had not been fully measured. *Evid. Hr'g.* at 104:1-13. TURN's opportunistic use of
20 Mr. Shultz's testimony does not support TURN's desired result.

21 Ultimately, there is no need to look at pricing trends where a market is demonstrably
22 competitive, and Consolidated's market is unquestionably so. Nevertheless, Consolidated's voice
23 and broadband pricing since URF is entirely consistent with the competitive nature of its service
24 territory and commensurate with advances in broadband capability over that timeframe.

25 **B. Intervenors Have Not Identified Any Service Quality Concerns with**
26 **Consolidated.**

27 Both ORA and TURN suggest that sub-par service quality exists amongst URF ILECs and
28 that this is a symptom of the lack of a functioning competitive market. *See e.g. ORA Opening Br.*

1 at 46-47; *TURN Opening Br.* at 41-42, 65-69. As the Respondent Coalition explained in its
2 opening brief, service quality is not a proper consideration in this proceeding because it is not
3 related to the core competitive questions presented in the Scoping Ruling. *Scoping Memo*, at 3
4 (citing *Preliminary Scoping Memo*, 13-14). In fact, it is the subject of a separate proceeding. *See*
5 R.11-12-001.

6 Notwithstanding the fundamental irrelevance of service quality to the questions in this
7 proceeding, neither ORA nor TURN has identified any service quality problem with Consolidated
8 that would satisfy the premise that service quality has suffered under URF. To the contrary,
9 Consolidated's service quality has been consistently strong under URF. *See Consolidated's*
10 *Opening Brief*, at 14. To the extent that the Commission considers TURN's and ORA's overbroad
11 statements regarding service quality compliance as part of this proceeding, the Commission should
12 recognize that these broad-brush propositions do not apply to Consolidated.

13 **C. Intervenor Neither Demonstrate The Relevance of Earnings Information Nor**
14 **Show That Consolidated Has Excessive Earnings.**

15 Without any factual basis, ORA suggests that there are "indicia of over-earnings" amongst
16 ILECs. *ORA Opening Br.* at 43. ORA's focus on earnings reflects a misplaced and antiquated
17 view of how to analyze the competitive market. Where a market is competitive, earnings
18 regulation and earnings review are unnecessary, as the URF Decision recognized. D.06-08-030
19 (URF Decision), at 234-235. The purpose of this proceeding is to examine competition directly,
20 not to review earnings as a proxy for competition. That approach is a relic of rate-of-return
21 regulation that the Commission has repudiated for decades. *See e.g.*, D.96-07-059 (Roseville
22 Telephone, Consolidated's predecessor), at n.31a.

23 ORA's assertions are also lacking in any factual basis. ORA's only alleged support for this
24 claim is its assertion that Frontier paid higher than book value to purchase Verizon's ILEC
25 operations. *Id.* This argument rests on an unsupported connection between transactional purchase
26 prices and profits.¹⁴ No such connection has been established on the record, and even if it had,

27 ¹⁴ Neither ORA's brief nor its testimony establish any nexus between transactional purchase prices
28 that exceed book value and current profits. Purchase prices for large telecommunications
operations are negotiated based on a far more nuanced and complex set of factors than ORA's

1 this would have no bearing on ORA's generalization that ILEC earnings are excessive. There is
2 absolutely no record support for this proposition, and none which could imply that Consolidated or
3 any other ILEC is experiencing monopolistic earnings. ORA's claims should be rejected as
4 baseless.

5 **D. Consolidated's Competitive Entry Undermines TURN's Claim That**
6 **Incumbents "Stick to Their Turf."**

7 A key element of TURN's assessment of competition in California is that "incumbents
8 stick to their turf," but TURN's opening brief ignores a compelling example that undermines its
9 conclusion. *TURN Opening Br.* at 53. The record is clear that Consolidated has overbuilt two
10 other ILECs in significant portions of the Sacramento metropolitan market. *Consolidated's*
11 *Supplemental Response to TURN Set 1, Data Request 14*, attached to Ex. 54 *TURN (Roycroft) 6/1*
12 *Testimony*. Through its CLEC operations, Consolidated has substantially overbuilt Frontier's Elk
13 Grove exchange, which is the most significant service area of Frontier's legacy operations.
14 Consolidated has also deployed significant facilities in AT&T's service territory in Sacramento.
15 These examples of competitive market entry are well documented and displayed clearly on the
16 California Broadband Map. In fact, Dr. Roycroft acknowledges that Consolidated has not "stuck
17 to its turf," but TURN's brief fails to correctly assess the ramifications of Consolidated's approach.
18 Ex. 54, *TURN (Roycroft) 6/1 Testimony* at 96:5-97:10. In fact, Consolidated's competitive
19 behavior is consistent with a highly-competitive market for all market participants in the
20 Sacramento area.

21 **E. Intervenors Offer No Evidence That Consolidated Has "Refused to Deal" In**
22 **Wholesale or Resale Markets.**

23 Both TURN and ORA attempt to leverage their competitive analysis by implying that
24 ILECs are engaging in anti-competitive behavior in wholesale markets. These assertions are
25 unfounded and unrelated to the assessment of competition that is the focus of this proceeding.

26 ORA's opening brief includes a section entitled "refusal to deal," but ORA's argument rests
27 solely upon policy positions that certain ILECs have advanced before regulatory bodies on the
28 issues of unbundling and wholesale requirements. *ORA Opening Br.* at 45-46. These references
simplistic analysis suggests.

1 do not establish any "refusal to deal," and no such implication could be applied to Consolidated
2 based on the record.

3 TURN cites to reflections from CLECs that ILECs control special access and other
4 wholesale markets. *TURN Opening Br.* at 72-73. The record reflects compelling evidence that
5 contradicts these views. Ex. 5, *AT&T (Aron) 6/1 Testimony* at 53-56. However, even if they were
6 true, TURN fails to establish a connection between these propositions and the competitiveness of
7 the local voice or broadband markets. Special access and many other wholesale offerings must be
8 provided at regulated rates, so any allegations of differential bargaining power are already
9 addressed by applicable rules. *See e.g., ALJ-181.*

10 Nothing in the record suggests that Consolidated has attempted to manipulate the special
11 access or resale market to impair its competitors, nor is there any evidence that Consolidated could
12 do so. Indeed, the California Broadband Map reflects that Consolidated's principal competitors
13 have their own networks, so concerns regarding wholesale access in Consolidated's service
14 territory are minimal at best. Nevertheless, as the URF Decision recognized, CLEC resale and
15 wholesale access remains possible throughout Consolidated's territory, and special access remains
16 available at regulated rates. There is no regulatory problem that has been identified in these areas,
17 let alone one that would compel findings about the competitiveness of the local market.

18 **V. INTERVENOR PROPOSALS FOR POLICY CHANGE ARE OUTSIDE THE**
19 **SCOPE OF THE PROCEEDING AND WHICH WOULD HARM**
20 **COMPETITIVE MARKETS.**

21 Ignoring the strictly data-focused nature of the proceeding, Intervenor's nevertheless offer
22 specific policy proposals and proposed changes to Commission regulations. These
23 recommendations are squarely outside of the scope of this proceeding and should be ignored.
24 Even setting aside their procedural impropriety, many of these proposals would harm competitive
25 dynamics in the telecommunications market. Inevitably, if adopted, Intervenor's proposals would
26 result in new regulatory burdens on regulated wireline providers that further skew the playing field
27 relative to their competitors.

28 The Scoping Memo makes clear that this proceeding is strictly a "data gathering and data

1 analysis exercise" and that "no rules or regulations will be adopted (or repealed) in this phase of
2 the proceeding." Scoping Ruling at 7. Statements by Commissioner Peterman and
3 Administrative Law Judge "ALJ" Bemederfer at the January 2016 Prehearing Conference
4 confirm the same. January PHC Tr. at 11:15-18 (Commissioner Peterman: "This proceeding is not
5 a typical quasi-legislative proceeding in that we're not setting rules for the industry or a subset of
6 the industry."); PHC Tr. at 24:1-9 (ALJ Bemederfer: "But, this proceeding is limited to
7 information gathering, as the commissioner has pointed out. And the Commission itself has
8 disclaimed any intention to either make rules or set rates."). For this reason, any findings derived
9 from this proceeding must be limited to factual propositions regarding the state of competition.
10 Intervenor's proposals exceed this scope, and the Commission would commit legal error if it
11 considered those proposals here. *See Southern California Edison v. Pub. Util. Comm'n*, 140
12 Cal.App.4th 1085 (2006) (annulling Commission decision where it deviates from the issues
13 defined in the Scoping Memo).

14 Despite acknowledging that this proceeding should be "limited to findings and conclusions
15 of fact with regards to competition in the market place," ORA devotes significant portions of its
16 brief to "issues for the next phase." *ORA Opening Brief*, at 64- 74. This construction of ORA's
17 presentation ignores the fact that currently there is no "next phase" of this proceeding.¹⁵ The
18 substance of ORA's proposals is also troubling, as ORA seeks to reinstitute various elements of
19 rate-of-return regulation and then compound them with detailed monitoring requirements that
20 would impose significant burdens on regulated providers. ORA argues for earnings review and
21 review of expenses and investments, but these mechanisms are reserved for the rate-of-return
22 environment, which the Commission rejected for large and mid-sized telephone companies two
23 decades ago. D.96-12-074 (Roseville).

24 Several Intervenor's advocate for enhanced reporting requirements, but jurisdictional

25 ¹⁵ Although the *Scoping Memo* notes that the Commission will not adopt or repeal rules in this
26 "phase" of the proceeding, Consolidated objects to the adoption or repeal of rules in *any* phase of
27 this proceeding as exceeding the scope of the *OII* and violating Public Utilities Code Sections
28 1708 and 1708.5, which require evidentiary hearings before findings or rules can be altered from
prior Commission decisions that were adopted following hearings.

1 limitations would necessarily mean that these reporting obligations would fall uniquely on
2 regulated providers like Consolidated. *See e.g.*, ORA Opening Brief, at 65-67; TURN Opening
3 Brief, at 38(regarding Form 477 data); *see generally* Greenling Opening Brief (recommending
4 data collection of information pertaining to mergers, rates, telecommunications burden, and
5 telecommunications insecurity). This is an untenable result in a highly-competitive market, which
6 the Commission would distort if it followed Intervenor's lead.

7 Like the consumer groups, CALTEL's brief advances policy arguments that exceed the
8 bounds of the proceeding. CALTEL's arguments are doubly problematic in that many of them
9 pertain to current or previous Commission proceedings, where CALTEL's issues have already
10 been addressed – or are being addressed – on a record tailored to those issues. These issues
11 include service quality (which is being addressed in R.11-12-001), copper retirement (which was
12 addressed in R.08-01-005), and a variety of wholesale issues that are the proper subject of
13 proceedings resolving any carrier-to-carrier disputes when then areas. *CALTEL Opening Brief*, at
14 14. CALTEL also asks the Commission to take action regarding IP-based service agreements, but
15 that issue is beyond the Commission's jurisdiction. *See* 47 U.S.C. § 151; *see also Louisiana Pub.*
16 *Serv. Comm'n v. FCC*, 476 U.S. 355, 360 (1986) (explaining boundaries of intrastate and
17 interstate jurisdictions). Indeed, the Commission has acknowledged that “[t]o the extent that the
18 issues raised address interstate telecommunications service, this Commission has no jurisdiction.”
19 D.82-03-070 (acknowledging jurisdictional limitations in resolving TURN complaint case against
20 Pacific Telephone).”

21 The Commission should ignore Intervenor's attempts to expand the scope of this
22 proceeding. Parties were directed to confine their briefs to the issues in the proceeding, which has
23 been defined as a focused, fact-gathering exercise. It would not be equitable to consider concrete
24 proposals in a proceeding where such proposals have been categorically excluded and other parties
25 have not had a proper opportunity to present their views.

26 **VI. CONCLUSION**

27 Intervenor's present a vision of the telecommunications market in California that does not
28

1 square with reality, and which bears no resemblance to the robust and pervasive competitive
2 dynamics in Consolidated's service territory. Intervenor urge the Commission to define the
3 market in a narrow and granular manner, but empirical data, prevailing economic theory, and
4 common sense all militate in favor of a broader market definition. There is no legitimate basis for
5 excluding mobile and fixed wireless service from the definition of voice and data markets, and this
6 is especially true in Consolidated's service territory, which is blanketed by coverage from at least
7 four wireless carriers and from at least one fixed wireless provider. 99% of Consolidated's
8 customer locations also have a facilities-based wireline alternative to Consolidated's service. All
9 of these results are evident from the California Broadband Availability Map, and, as to
10 Consolidated, the competitive picture is irrefutable.

11 The Commission should resist Intervenor's attempts to narrow and segment the market, but
12 whether Consolidated's service territory is viewed as a whole or as the sum of its parts, the result
13 is the same – the area is highly competitive. Even ORA's and TURN's own measurements of the
14 market, if properly calibrated with accurate inputs, prove this to be true. There is no record here
15 upon which the Commission could conclude that California voice and data markets are not
16 competitive – let alone reverse URF, as TURN and ORA would like to do. But even if the
17 Commission reaches different conclusions for the broader market, Intervenor's portrayal of
18 Consolidated's service territory is incorrect and cannot be supported.

19 Dated this 26th day of August, 2016.

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28 Email: prosvall@cwclaw.com

By: /s/
Patrick M. Rosvall
Attorneys for Consolidated

APPENDIX A

USGS Topographical Map

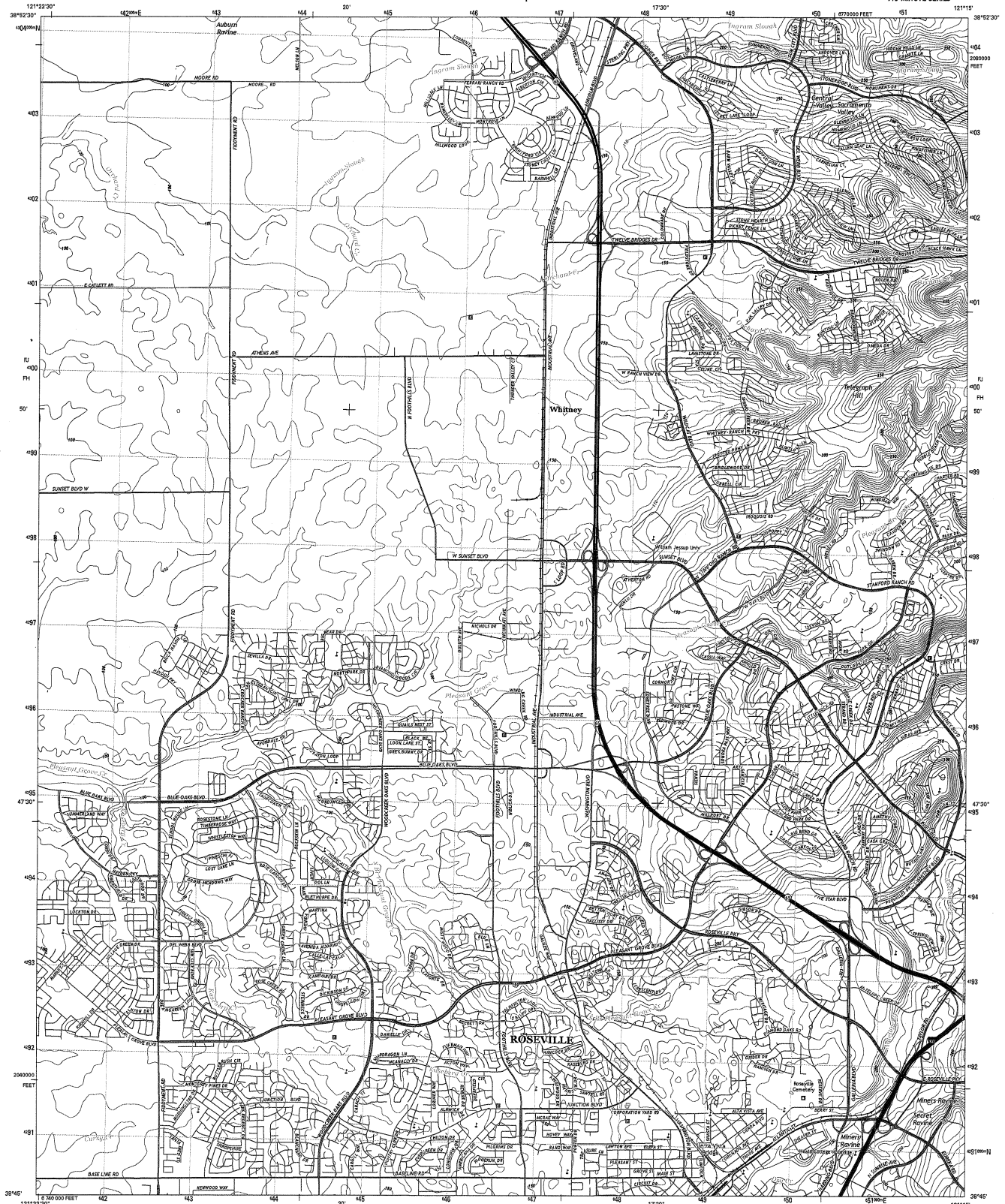
Roseville Quadrangle



U.S. DEPARTMENT OF THE INTERIOR
U.S. GEOLOGICAL SURVEY

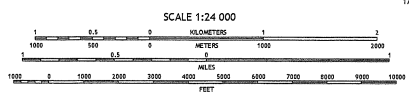
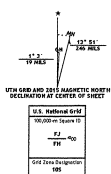


ROSEVILLE QUADRANGLE
CALIFORNIA-PLACER CO.
7.5-MINUTE SERIES



Produced by the United States Geological Survey
North American Datum of 1983 (NAD83)
World Geodetic System of 1984 (WGS84) Projection and
1200-meter grid. Universal Transverse Mercator, Zone 10S
18 100-foot offset. California Coordinate System of 1983 (Data 2)
This map is not a legal document. Boundaries may be
generated for this map scale. Private lands within government
reservations may not be shown. Obtain permission before
entering private lands.

Imagery: NADP, July 2012
Roads: HERE, ©2013 - 2014
Names: HERE, ©2013 - 2014
Hydrography: National Hydrography Dataset, 2012
Contours: National Elevation Dataset, 2000
Boundaries: Multiple sources; see metadata file 1972 - 2015
Public Land Survey System: BLM, 2011



CONTOUR INTERVAL 10 FEET
NORTH AMERICAN VERTICAL DATUM OF 1988

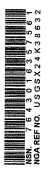
This map was produced to conform with the
National Geospatial Program US Topo Product Standard, 2011.
A metadata file associated with this product is draft version 8.0.15



1	2	3
4	5	6
7	8	9
10	11	12

ROAD CLASSIFICATION	
Expressway	Local Connector
Secondary Hwy	Local Road
Ramp	AND
Interstate Route	US Route
	State Route

ROSEVILLE, CA
2015



USGS Topographical Map

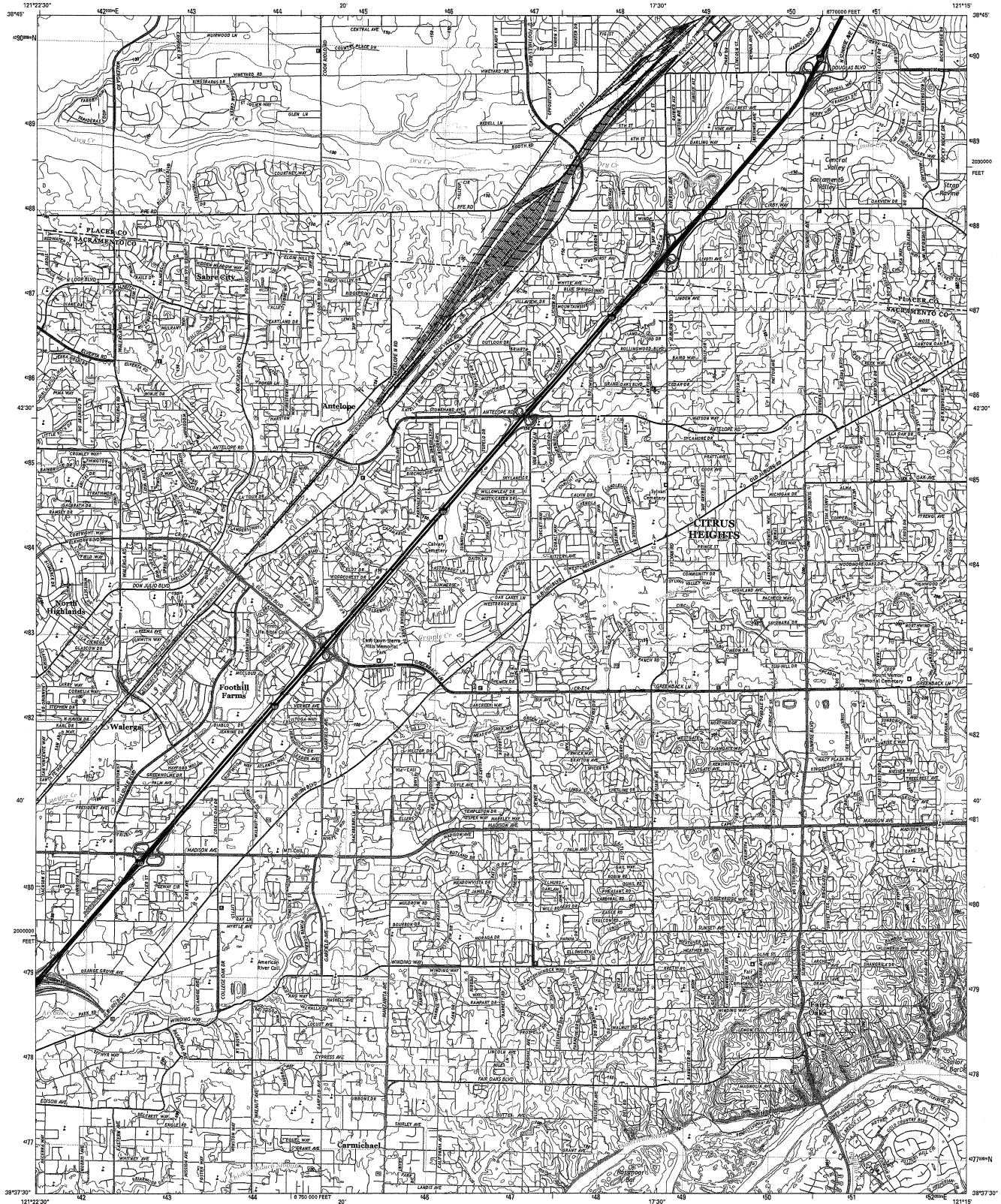
Citrus Heights Quadrangle



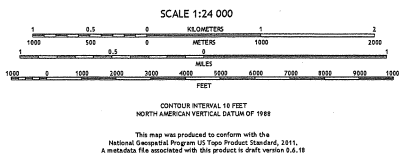
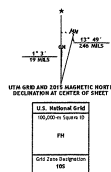
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U.S. GEOLOGICAL SURVEY



CITRUS HEIGHTS QUADRANGLE
CALIFORNIA
7.5-MINUTE SERIES



Produced by the United States Geological Survey
North American Datum of 1983 (NAD83)
World Geodetic System of 1984 (WGS84) Projection
1 000-meter grid (Universal Transverse Mercator, Zone 10S)
1 000-foot scale California Coordinate System of 1983 (Zone 2)
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Imagery: NADP, June 2012
Relief: SRTM30 PLUS, 2014
Names: National Hydrography Dataset, 2012
Contours: National Elevation Dataset, 2013
Boundaries: Multiple sources; see metadata file 015 - 2015
Public Land Survey System: BLM, 2011



ROAD CLASSIFICATION
Expressway
Secondary Hwy
Ramp
Local Connector
Local Road
AWD
US Route
State Route
1 Pleasant Grove
2 Roseville
3 Napa
4 Rio Linda
5 Yuba City
6 Sacramento East
7 Carmichael
8 Buffalo Creek
CITRUS HEIGHTS, CA
2015

APPENDIX B

Fixed Wireless Coverage

Terrestrial Fixed Wireless Coverage

